

**TITLE 11 CONSUMER PROTECTION DIVISION OF
THE OFFICE OF THE ATTORNEY GENERAL**

Proposed Rule
LSA Document #03-165

DIGEST

Adds 11 IAC 3 relating to the regulation of professional fundraiser consultants and professional solicitors to establish fines on professional fundraiser consultants and solicitors as permitted by IC 23-7-8, define certain terms, and establish requirements for the registration application, the solicitation notice, and the financial report that are filed with the consumer protection division. Effective 30 days after filing with the secretary of state.

11 IAC 3

SECTION 1. 11 IAC 3 IS ADDED TO READ AS FOLLOWS:

ARTICLE 3. PROFESSIONAL FUNDRAISER CONSULTANTS AND PROFESSIONAL SOLICITORS

Rule 1. Definitions

11 IAC 3-1-1 Applicability

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-1

Sec. 1. Unless otherwise noted, the definitions set forth at IC 23-7-8-1 and this rule apply throughout this article. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-1-1*)

11 IAC 3-1-2 “Document” defined

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8

Sec. 2. As used in this article, “document” refers to a registration application, contract, solicitation notice, financial report, or consultant disclosure form. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-1-2*)

11 IAC 3-1-3 “Information” defined

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8

Sec. 3. As used in this article, “information” refers to:

- (1) a document as described in section 2 of this rule;**
- (2) an amendment as described in 11 IAC 3-2-3; or**
- (3) any other paperwork required to be filed under IC 23-7-8 or this article.**

(*Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-1-3*)

Rule 2. General Provisions

11 IAC 3-2-1 Filing requirements

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8

Sec. 1. (a) Subject to subsection (b), the filing of information with the division is complete on the earliest of the following dates that apply to the filing:

- (1) The date on which the information is delivered to the division.**
- (2) The date of the postmark on the envelope containing the information if the information is mailed to the division by United States mail.**
- (3) The date on which the information is deposited with a private carrier, as shown by a receipt issued by the carrier, if the information is sent to the division by private carrier.**

(b) Any information required to be filed under IC 23-7-8 shall not be considered filed with the division if the information is incomplete, incorrect, or fails to comply with the requirements of IC 23-7-8 and this article. (Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-2-1)

11 IAC 3-2-2 Document filing

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8

Sec. 2. The date a document is considered filed is the date the document first meets the requirements of section 1 of this rule. (Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-2-2)

11 IAC 3-2-3 Amendments

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8

Sec. 3. (a) A professional fundraiser consultant or professional solicitor may file an amendment to a registration application, contract, solicitation notice, financial report, or consultant campaign disclosure form.

(b) The amendment becomes a part of the document to which the amendment relates upon filing.

(c) The amendment shall:

- (1) clearly indicate that it is an amendment; and**
- (2) reference the document that it is amending.**

(d) The filing of an amendment does not prohibit or restrict the division from initiating any action under IC 23-7-8 or this article. (Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-2-3)

Rule 3. Registration

11 IAC 3-3-1 Application requirement

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 1. To comply with the disclosure requirements of IC 23-7-8-2(a), a professional fundraiser consultant or professional solicitor shall complete a registration application as prescribed by the division. (Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-3-1)

11 IAC 3-3-2 Information and fee required

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2; IC 23-7-8-4

Sec. 2. A professional fundraiser consultant or professional solicitor shall not be considered registered under IC 23-7-8-2(a) until:

- (1) the registration application is filed with the division; and**

(2) the correct fee is received by the division.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-3-2)

11 IAC 3-3-3 Requirements for registration update

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2; IC 23-7-8-4

Sec. 3. (a) A professional fundraiser consultant or professional solicitor who files a registration update under IC 23-7-8-4(c) shall comply with:

(1) IC 23-7-8-2(a); and

(2) this article.

(b) A professional fundraiser consultant or professional solicitor who fails to file a registration update as required by IC 23-7-8-4(c) will be deemed not registered with the division under IC 23-7-8-2(a). *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-3-3)*

11 IAC 3-3-4 Fines

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2; IC 23-7-8-4

Sec. 4. (a) The division may fine a professional fundraiser consultant or professional solicitor up to one hundred dollars (\$100) for each month or part of a month after the date on which the registration update and renewal fee were due to be filed under IC 23-7-8-4(c).

(b) If a professional fundraiser consultant or professional solicitor was previously fined by the division under subsection (a), the division may fine the professional fundraiser consultant or professional solicitor up to two hundred dollars (\$200) for each month or part of a month after the date on which the registration update and renewal fee are due under IC 23-7-8-4(c). *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-3-4)*

11 IAC 3-3-5 Registration renewals arriving after the renewal year ends

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2; IC 23-7-8-4

Sec. 5. If a professional fundraiser consultant or professional solicitor has not filed a registration update or paid the renewal fee under IC 23-7-8-4(c) before September 2 of the year the renewal is due, the professional fundraiser consultant or professional solicitor must:

(1) apply for registration under IC 23-7-8-2(a); and

(2) pay the registration fee of one thousand dollars (\$1,000) under IC 23-7-8-4(a).

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-3-5)

Rule 4. Consultant Contracts

11 IAC 3-4-1 Contract filing requirements

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 1. Before acting as a professional fundraiser consultant for a charitable organization, the professional fundraiser consultant must file a written contract described under IC 23-7-8-2(c) with the division. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-4-1)*

11 IAC 3-4-2 Consultant disclosure form

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 2. A professional fundraiser consultant may complete a consultant disclosure form as prescribed by the division for each contract the professional fundraiser consultant enters into with a charitable organization. The professional fundraiser consultant shall sign the consultant disclosure form while under oath. (Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-4-2)

11 IAC 3-4-3 Fines

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 3. (a) For each contract entered into with a charitable organization, a professional fundraiser consultant who fails to file a contract within the period specified by IC 23-7-8-2(c) may be assessed a fine of up to one hundred dollars (\$100) for each month or part of a month after the date on which the consultant begins acting as a professional fundraiser consultant.

(b) If a professional fundraiser consultant was previously fined by the division under subsection (a), the division may assess a fine of up to two hundred dollars (\$200) for each month or part of a month after the date on which the consultant begins acting as a professional fundraiser consultant. (Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-4-3)

11 IAC 3-4-4 Campaign starting date

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 4. For purposes of section 3 of this rule, the following applies:

(1) Whenever a professional fundraiser consultant does not submit to the division a consultant disclosure form, the date on which the consultant begins acting as a professional fundraiser consultant is the starting date of the consulting services as stated on the contract.

(2) Whenever a professional fundraiser consultant submits to the division a consultant disclosure form that complies with section 2 of this rule, the date on which the consultant begins acting as a professional fundraiser consultant is the starting date listed on the consultant disclosure form.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-4-4)

Rule 5. Solicitor Contracts

11 IAC 3-5-1 Contract requirements

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 1. Before a professional solicitor engages in a solicitation, the professional solicitor must file a written contract described under IC 23-7-8-2(d) with the division. (Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-5-1)

11 IAC 3-5-2 Fines

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 2. (a) For each contract entered into with a charitable organization, a professional solicitor who fails to file a contract within the period specified by IC 23-7-8-2(d) may be assessed a fine of up to one hundred dollars (\$100) for each month or part of a month after the date on which the professional solicitor begins soliciting.

(b) If a professional solicitor was previously fined by the division under subsection (a), the division may assess a fine of up to two hundred dollars (\$200) for each month or part of a month after the date on which the professional solicitor begins soliciting. (Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-5-2)

11 IAC 3-5-3 Campaign starting date

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 3. For purposes of section 2 of this rule and 11 IAC 3-6-2, the date on which the professional solicitor begins soliciting for a charitable organization is considered to be the earlier of:

(1) the date the professional solicitor begins soliciting; or

(2) the date when soliciting began as listed on the solicitation notice under IC 23-7-8-2(e)(2).

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-5-3)

Rule 6. Solicitation Notice Filings

11 IAC 3-6-1 Campaign requirements

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 1. Before a professional solicitor begins a solicitation campaign, the professional solicitor must file a solicitation notice described under IC 23-7-8-2(e) with the division. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-6-1)*

11 IAC 3-6-2 Fines

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 2. (a) A professional solicitor who fails to file a solicitation notice by the beginning date of a solicitation campaign may be assessed a fine of up to one hundred dollars (\$100) for each month or part of a month after the beginning date of the solicitation campaign.

(b) If a professional solicitor was previously fined by the division under subsection (a), the division may assess a fine of up to two hundred dollars (\$200) for each month or part of a month after the beginning date of the solicitation campaign. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-6-2)*

Rule 7. Financial Reports

11 IAC 3-7-1 Financial report requirements

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 1. To comply with IC 23-7-8-2(f), a professional solicitor shall complete a financial report as prescribed by the division. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-7-1)*

11 IAC 3-7-2 Filing deadlines

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 2. A financial report under IC 23-7-8-2(f) shall be filed with the division not later than ninety (90) days after one (1) of the following occurs:

(1) The ending of a solicitation campaign.

(2) The anniversary of the commencement of a solicitation campaign lasting more than one (1) year.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-7-2)

11 IAC 3-7-3 Fines

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 3. (a) For each financial report, a professional solicitor who fails to file a financial report within the time period prescribed by section 2 of this rule may be assessed a fine of up to one hundred dollars (\$100) for each month or part of a month starting from the ninety-first day after one (1) of the following occurs:

- (1)** The ending of a solicitation campaign.
- (2)** The anniversary of the commencement of a solicitation campaign lasting more than one (1) year.

(b) If a professional solicitor was previously fined by the division under subsection (a), the division may assess a fine of up to two hundred dollars (\$200) for each subsequent violation of subsection (a). *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-7-3)*

11 IAC 3-7-4 Campaign starting and ending dates

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 4. (a) For purposes of sections 2 through 3 of this rule, the dates when a solicitation campaign, other than a campaign described in subsection (b), will begin and end are the projected dates when soliciting will begin and end as listed on the solicitation notice under IC 23-7-8-2(e)(2).

(b) If a solicitation campaign ends earlier than the projected date when soliciting will end as listed on the solicitation notice, the professional solicitor shall submit a financial report as described in this rule within ninety (90) days from the actual ending date of the solicitation campaign. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-7-4)*

Rule 8. Miscellaneous and Penalties

11 IAC 3-8-1 Division's authority not prohibited or restricted

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 1. (a) This article shall not prohibit or restrict the division from initiating any action authorized under IC 23-7-8 or any other law enforced by the division.

(b) The division may deny or revoke the registration of a professional solicitor who fails to comply with IC 23-7-8-2(f) even if the professional solicitor has not been previously assessed a fine under this article. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-8-1)*

11 IAC 3-8-2 Fines are in addition to fees

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8-2

Sec. 2. A fine under this article is in addition to any fee provided under IC 23-7-8. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-8-2)*

11 IAC 3-8-3 Administrative Orders and Procedures Act applies

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 4-21.5; IC 23-7-8

Sec. 3. IC 4-21.5 applies to any proceedings under this article. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-8-3)*

11 IAC 3-8-4 Lack of warning not a defense

Authority: IC 4-6-9-8; IC 23-7-8-8

Affected: IC 23-7-8

Sec. 4. The lack of a warning to a professional fundraiser consultant or professional solicitor that a document submitted by the professional fundraiser consultant or professional solicitor is in any way incomplete, incorrect, or fails to comply with the requirements of IC 23-7-8 or this title is not a defense to an action by the division under this article. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-8-4)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 25, 2003 at 10:00 a.m., at the Office of the Attorney General, Indiana Government Center-South, 302 West Washington Street, Fifth Floor, Indianapolis, Indiana the Consumer Protection Division of the Office of the Attorney General will hold a public hearing on proposed new rules relating to the regulation of professional fundraiser consultants and professional solicitors under IC 23-7-8 to establish fines and requirements for reports to be filed with the Consumer Protection Division. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Fifth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Steve Carter
Attorney General
Consumer Protection Division of the Office of the Attorney General